

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE DISTRICT OF NEW YORK SOUTHERN

3 Case No.1-09-50026

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5 IN RE:

6 MOTORS LIQUIDATION COMPANY, et al.,

7 f/k/a General Motors Corp., et al.

8 - - - - - x

9 U.S. Bankruptcy Court

10 One Bowling Green

11 New York, NY 10004-1408

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17 May 31, 2012

18 9:45 a.m.

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21 B E F O R E :

22 HON ROBERT E. GERBER

23 U.S. BANKRUPTCY JUDGE

24

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1 Debtors' Twenty-Seventh Omnibus Objection to Claims
2 (Incorrectly Classified Claims)

3
4 Debtors' 168th Omnibus Objection to Claim (Supplemental
5 Executive Retirement Benefits Claims of Former Executive
6 Employees)

7
8 Debtors' 169th Omnibus Objection to Claims (Welfare Benefits
9 Claims of Retired and Former Salaried and Executive
10 Employees)

11
12 Debtors' 170th Omnibus Objection to Claims (Welfare Benefits
13 Claims of Retired and Former Salaried and Executive
14 Employees)

15
16 Debtors' 171st Omnibus Objection to Claims (Welfare Benefits
17 Claims of Retired and Former Salaried and Executive
18 Employees)

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20 Debtors' 172nd Omnibus Objection to Claims (Welfare Benefits
21 Claims of Retired and Former Salaried and Executive
22 Employees)

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1 Debtors' 174th Omnibus Objection to Claims (Welfare Benefits
2 Claims of Retired and Former Salaried and Executive
3 Employees)

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5 Debtors' 177th Omnibus Objection to Claims (Welfare Benefits
6 Claims of Retired and Former Salaried and Executive
7 Employees)

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9 268th Omnibus Objection to Claims and Motion Requesting
10 Enforcement of Bar Date Orders

11

12 276th Motion for Omnibus Objection to Claim(s) Requesting
13 Enforcement of Bar Date Orders

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15 277th Motion for Omnibus Objection to Claim(s) (Insufficient
16 Documentation)

17

18 278th Motion for Omnibus Objection to Claim(s) (Incorrectly
19 Classified Claims)

20

21 279th Motion for Omnibus Objection to Claim(s) (No Liability
22 Claims)

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1 Objection to Claims 44829, 70019 and 64854 (filed by Exide
2 Technologies, Relco Systems, Inc., and Roth Global Plastics,
3 Inc.)

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1 A P P E A R A N C E S :

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1 P R O C E E D I N G S

2 THE COURT: Alright, folks, good morning, those in
3 the courtroom and on the phone. We are here on General Motors
4 Corporation, aka Motors Liquidation Company. We have
5 objections to claims. Shall we begin?

6 MR. GRIFFITHS: Good morning, Your Honor. David
7 Griffiths, of Weil, Gotshal, Manges, for the debtors, the
8 post effective date debtors and Motors Liquidation Company
9 GUC Trust.

10 THE COURT: Pause, please. It's very hard to hear
11 you over the air conditioning. We're going to try to go
12 without air conditioning for as long as we can. Try again.

13 MR. KOLAGA: Good morning, Your Honor, this is
14 John Kolaga for Relco Systems.

15 THE COURT: Okay, thank you. I'm, we have many,
16 many people who are appearing on the phone. I am going to
17 ask, rather than getting appearances all at the beginning
18 that people give me their appearances when their particular
19 claims are up for discussion. Okay, go ahead, please.

20 MR. GRIFFITHS: Thank you, Your Honor. Again,
21 David Griffiths, Weil, Gotshal & Manges, for the debtors, the
22 post-effect date debtors and Motors Liquidation Company GUC
23 Trust. Your Honor, we have six omnibus objections to claims
24 going forward today, with respect to the 169th, 170th, 171st,
25 172nd, 174th, and 177th omnibus objection to claims, relating

1 to welfare benefit claims of retired and former salaried and
2 executive employees. These relate to seven claimants, who I
3 believe are on the phone today, with one claimant, Mr.
4 Curzon, who has adjourned to June 14th.

5 Your Honor, with your permission, we could adopt
6 the format from the previous hearings, where we hear from the
7 claimants and then reserve the right to reply to any new
8 materials. The GUC Trust is happy to rest on its existing
9 submissions, but would like to designate for the record for
10 any appeal, Your Honor's prior rulings with respect to
11 welfare benefit claims, most notably the May 15th, April 26th
12 and January 18th hearings.

13 THE COURT: Okay, that'll be fine. Did you have an
14 order in mind for addressing the respective claims? Did you
15 want to hear the environmental claim, the Relco claim, first,
16 or last, or something in between?

17 MR. GRIFFITHS: Your Honor, I believe the welfare
18 benefits should go first, if that's acceptable. My co-counsel
19 is handling the environmental claim.

20 THE COURT: Okay.

21 MR. GRIFFITHS: The first claim, if Your Honor
22 would like to take it forward would be from Marilea Meder on
23 behalf of her surviving spouse, Mr. Robert Meder.

24 THE COURT: Okay, that is Marilea Meder, M-E-D-E-
25 R?

1 MR. GRIFFITHS: Correct, Your Honor.

2 THE COURT: Okay, Ms. Meder, are you on the phone?

3 MS. MEDER: Yes, Your Honor, I'm here.

4 THE COURT: Would you like to orally argue on your
5 claim?

6 MS. MEDER: Yes, Your Honor. If my late husband,
7 Robert Meder, had been healthy at the time of the General
8 Motors bankruptcy, this claim would have never been filed. He
9 understood then, as I do now, that the life insurance benefit
10 promised to him at the time of his retirement in 2002 was not
11 a guaranteed amount. This claim is not for continued coverage
12 with a payout for a survivor at some future date. So my
13 position is that this claim is different than those that have
14 been previously denied.

15 My claim is for a settlement that acknowledges
16 circumstances beyond my late husband's control that prevented
17 him from having adequate life insurance coverage at the time
18 of his death. As it turned out, when General Motors filed for
19 bankruptcy, my late husband had only 16 months to live.
20 Throughout the many years that he fought cancer, one source
21 of comfort for him was that if he should succumb to the
22 disease, I would receive life insurance that would help me
23 move forward after his death. You can imagine his dismay when
24 that benefit was no longer available.

25 Had my late husband's health permitted, he would

1 have purchased a private life insurance policy. His poor
2 health prevented that. He did purchase a \$100,000 policy that
3 was offered to him as a part of the new organization. This
4 policy did not require proof of good health, but the insured
5 would have to survive for two years from the date of purchase
6 for the policy to pay. He did not survive that long.

7 My late husband's situation is one of those
8 falling through the crack scenarios. Through no fault of his
9 own, he was unable to provide for his family in the way he
10 had always done. That is why I have followed through with his
11 claim and am speaking to you today.

12 If this Court has the authority and discretion to
13 consider extenuating circumstances, such as the ones I have
14 shared, I respectfully request that the claim I am continuing
15 on my late husband's behalf be considered. Thank you.

16 THE COURT: Okay, thank you, Ms. Meder. Mr.
17 Griffiths, would you like to respond?

18 MR. GRIFFITHS: Your Honor, just to say that the
19 GUC Trust regrets Ms. Meder's difficult circumstances, but
20 they can't be helped in light of the debtors' liquidation.
21 The insurance policy that Ms. Meder is referring to was an
22 insurance policy that was put in place by New GM for the
23 debtors' former retired employees, and isn't the
24 responsibility of Motors Liquidation Company GUC Trust, who
25 can't affect its terms. Those are my only comments, Your

1 Honor.

2 THE COURT: Was there a policy in a lesser amount,
3 based on his earlier GM service that did pay out?

4 MR. GRIFFITHS: We'd have to ask Ms. Meder if it
5 actually paid out. I don't know the answer to that. But yes,
6 his life insurance, Mr. Meder's life insurance would have
7 reduced to the ultimate amount of \$10,000 and that should
8 have paid out, because that doesn't -

9 MS. MEDER: Yes, Your Honor, I received \$10,000.

10 THE COURT: Okay, but the inquiry, the problem is
11 that in order to get the increased amount for the difference
12 between \$10,000 and \$100,000, the insured had to continue to
13 live for a two-year period?

14 MR. GRIFFITHS: Your Honor, Ms. Meder, I believe,
15 is referring to essentially a new life insurance policy that
16 was put in place. It was a voluntary program. In fact, I saw,
17 for the first time, at this hearing, I've seen one of the
18 documents that offered that life insurance program. There was
19 a short window between August 3rd and August 14, 2009, during
20 which claimants could elect to participate in that program at
21 their own cost. As Ms. Meder noted, it was a program that
22 required no proof of existing health or any, had no issues
23 relating to prior conditions. I understand that it had a
24 condition any claimant to live for two years following
25 electing to take that policy. And, unfortunately, Mr. Meder

1 didn't fulfill those terms.

2 THE COURT: Uh-huh. Ms. Meder, did any of the
3 facts that Mr. Griffiths just stated, do they appear
4 inaccurate or incomplete to you?

5 MS. MEDER: As I could hear, everything seems to
6 be correct.

7 THE COURT: Okay, thank you. Okay, I'm, I'm going
8 to hear all of the objections first, and then I'm going to
9 rule on them thereafter. I'm hearing some strange noises from
10 the phone lines coming into the courtroom. I don't want to
11 put people on mute, since we have so many claimants on today.
12 But I would ask people to make sure that they are very quiet
13 at their ends. Who do you recommend that we hear next, Mr.
14 Griffiths?

15 MR. GRIFFITHS: Your Honor, we have Mr. Douglas
16 Sterett.

17 THE COURT: Okay, Mr. Sterett, are you on the
18 line?

19 MR. STERETT: Yes, Your Honor, I am. Can you hear
20 me alright?

21 THE COURT: I hear you, but I also hear some
22 squealing or some odd noise. I don't know if it's from your
23 phone or from somebody else's.

24 MR. STERETT: No, as do I. I hear the same noise.
25 I can't determine. I should not have any noise from this end.

1 THE COURT: Okay, would you like to be heard kind
2 of the way that Ms. Meder was heard?

3 MR. STERETT: That's fine. I don't have a lengthy,
4 lengthy argument at this point. I have just received the GUC
5 Trust's reply to my response. And in reviewing that, there
6 are some issues about my providing legal or factual support,
7 and contractual rights, and things of that nature. And what I
8 would like to do is have the opportunity to submit to the
9 Court my actual retirement agreement.

10 THE COURT: Okay, so in substance, you're asking
11 for me to continue the matter to give you further opportunity
12 to put paper before GM and before me?

13 MR. STERETT: Yes, yes, Your Honor, that's
14 correct.

15 THE COURT: Mr. Griffiths, do you have any
16 objection to that?

17 MR. GRIFFITHS: No objection, Your Honor, perhaps
18 to the June 14th hearing?

19 THE COURT: Okay. We have another hearing on June
20 14th, Mr. Sterett. Can you get your stuff in within the next
21 few days?

22 MR. STERETT: Yes, I can.

23 THE COURT: Okay, your request for the
24 continuance, that is, for the adjournment is granted. And
25 your matter will be heard on June 14th. Once again, you'll be

1 able to participate by phone. I would ask that you get your
2 papers into Old GM and the Court. Folks, I assume that wasn't
3 Mr. Sterett, but we have -

4 MR. STERETT: No, I hear papers shuffling or
5 something.

6 THE COURT: Yeah, so did I, and it's continuing.
7 Okay, forgive me, folks, we're going to have to do it this
8 way. Court Call, can you hear me? Court Call?

9 COURT CALL: Yes, Your Honor.

10 THE COURT: Would you please put everybody on
11 mute, except Mr. Sterett.

12 COURT CALL: Sure thing.

13 THE COURT: Thank you. Mr. Sterett, today is a
14 Thursday, the 31st of May. How long would it take you to mail
15 or fax, or e-mail your stuff to GM?

16 MR. STERETT: If I could have a week on that.

17 THE COURT: Any objection, Mr. Griffiths?

18 MR. GRIFFITHS: No, Your Honor. I'll contact Mr.
19 Sterett after the hearing by telephone and arrange the
20 easiest way for him to get the documents to us.

21 THE COURT: Okay, your request is granted, Mr.
22 Sterett, that is the request for the one week to get the
23 stuff in.

24 MR. STERETT: Okay, thank you, Your Honor.

25 THE COURT: Okay, now you're free to drop off the

1 line or stay, as you prefer.

2 MR. STERETT: Okay, I'll drop off. Thank you, Your
3 Honor.

4 THE COURT: Okay. Mr. Griffiths, your
5 recommendation for the next, please.

6 MR. GRIFFITHS: Your Honor, Mr. James P.
7 Kurlinski.

8 THE COURT: Kurlinski, K-U-R-L-I-N-S-K-I.

9 MR. GRIFFITHS: Correct, Your Honor.

10 THE COURT: Okay, Mr. Kurlinski, are you on the
11 phone?

12 MR. KURLINSKI: Yes, I am, Your Honor.

13 THE COURT: Okay, would you like to be heard?

14 MR. KURLINSKI: I don't really have much to say,
15 Your Honor. I've listened to the previous, and I just want
16 to say that when I retired, I fully expected to receive the
17 benefits that I was told I would get. And, obviously, they
18 have the right to change things. I do object to it, but I,
19 there's nothing I can do about it, so that's about all I have
20 to say, Your Honor.

21 THE COURT: Okay, fair enough. Under those
22 circumstances, Mr. Griffiths, do you want to be heard?

23 MR. GRIFFITHS: No, Your Honor, and the next
24 claimant would be Mr. Mohamed Fetouh, F-E-T-O-U-H.

25 MR. FETOUH: I am still on the line, Your Honor.

1 THE COURT: Okay, but, oh, F-E-T-O-U-H, Mohamed
2 Fetouh?

3 MR. GRIFFITHS: Correct, Your Honor.

4 MR. FETOUH: Yes, sir.

5 THE COURT: Mr. Fetouh, did I pronounce your name
6 correctly?

7 MR. FETOUH: Yes, sir, you did. Thank you.

8 THE COURT: Okay, would you like to be heard?

9 MR. FETOUH: Yes, sir.

10 THE COURT: Go ahead, please.

11 MR. FETOUH: Okay, the basis for my claim, Your
12 Honor, is I had the basic life insurance coverage that I
13 purchased and I paid for. And it was two times the annual
14 base salary. And as a result of the liquidation of GM, I was
15 told that I'm not going to get this coverage. And when I did
16 my calculations following the guidelines, it came to the
17 amount of \$86,000 plus some dollars. And also, there was some
18 life insurance coverage that was [indiscernible] \$10,000. So,
19 that is my claim, and I would like to be compensated at least
20 for the life insurance that, coverage that I purchased. Thank
21 you, Your Honor.

22 THE COURT: Okay, Mr. Fetouh, a question or two to
23 you, sir. Did GM ever give you a piece of paper that said
24 that your rights to your earlier amount of life insurance had
25 vested, V-E-S-T-E-D?

1 MR. FETOUH: Yes, sir, they did and I have
2 attached the enrollment letter to the documentation that I
3 sent to the attorney for them.

4 THE COURT: GM said your rights to insurance in
5 that amount had vested?

6 MR. FETOUH: I'm sorry, I could not, I don't
7 understand the question. Could you repeat that again, Your
8 Honor?

9 THE COURT: Yes, Mr. Fetouh, vested is a word of
10 art and law. Did GM ever use the word vested with you in
11 writing?

12 MR. FETOUH: No.

13 THE COURT: Okay, did GM give you any other piece
14 of paper that said that GM promised not to change the amount
15 of your life insurance?

16 MR. FETOUH: No.

17 THE COURT: Okay, thank you. Mr. Griffiths, do you
18 want to respond?

19 MR. GRIFFITHS: Yes, Your Honor, just to say I
20 believe I understand what Mr. Fetouh is referring to. He has,
21 he had basic life insurance coverage at two times his annual
22 base salary, pursuant to a welfare benefit program.

23 THE COURT: I need you to talk slower, please, Mr.
24 Griffiths.

25 MR. GRIFFITHS: Yes, Your Honor. Mr. Fetouh had

1 basic life insurance up to two times his annual base salary,
2 that was reduced according, in accordance with the welfare
3 benefit plan itself, just like every other welfare benefit
4 plan. So Mr. Fetouh is in the same situation as all other
5 claimants.

6 THE COURT: Okay. Okay, Mr. Fetouh, do you want to
7 reply to what Mr. Griffiths said just now?

8 MR. FETOUH: Yes, I fully understand this
9 situation applied to many people, as well. And if the Court
10 feels that we should be compensated, then I would like to be
11 included.

12 THE COURT: Very well, thank you. Okay, okay,
13 please just stay on the line, but silently going forward, Mr.
14 Fetouh.

15 MR. FETOUH: Yes, Your Honor.

16 THE COURT: Thank you. Mr. Griffiths, next
17 claimant, please.

18 MR. GRIFFITHS: Your Honor, we have Mr. Gerald S.
19 Kaspzyk, K-A-S-P-Z-Y-K.

20 THE COURT: Okay, Mr. Kaspzyk, are you on the
21 phone?

22 MR. KASPZYK: Yes, I am, Your Honor.

23 THE COURT: Okay, would you like to be heard?

24 MR. KASPZYK: Just to state that I expected when I
25 retired to receive all of the benefits that were originally

1 offered to us. And that, you know, based on the bankruptcy,
2 the benefits that have changed, but I think also based on the
3 fact that how they handled other participants in the
4 bankruptcy, primarily UAW, and that I think that the
5 rationale should be used the same for all of these claims.
6 And that's all I have at the time.

7 THE COURT: Okay, Mr. Kaspzyk, did you hear the
8 two questions that I asked one of the earlier claimants, I
9 think it was Mr. Fetouh? Did GM ever give you a piece of
10 paper that used the word vested?

11 MR. KASPZYK: No, not that I can recall.

12 THE COURT: I understand. Did GM ever give you a
13 word, a document that said in substance that we, GM, promise
14 not to change your benefits?

15 MR. KASPZYK: No, not that I can recall, either.

16 THE COURT: Okay, thank you, sir. Mr. Griffiths,
17 any desire to reply?

18 MR. GRIFFITHS: No, Your Honor, and if Your
19 Honor would like the next claimant, it would be Mr. Richard
20 A. Schell, S-C-H-E-L-L.

21 THE COURT: Okay, Mr. Schell, are you on the
22 phone?

23 MR. SCHELL: Yes, I am, Judge.

24 THE COURT: Would you like to be heard, sir?

25 MR. SCHELL: Yes, sir.

1 THE COURT: Go ahead, please.

2 MR. SCHELL: I believe that GM has established a
3 precedence for taking care of their people in many different
4 ways. One of them, I worked at the GM tech center in Warren,
5 Michigan, and it is like a mini city, and they actually had
6 medical facilities on the site. And there was the, Glen Eden
7 Hospital at the end of the site, which is an alcohol abuse,
8 or was considered an alcohol abuse center for a lot of the
9 employees of General Motors. When I entered hired back in
10 1965, it was considered that if you got a job at GM, you were
11 taken care from crib to grave. That was kind of like a known
12 fact, because they took care of their employees. However,
13 it's highly stressful and they expected you to give them your
14 whole life and soul. And those were the days, you probably
15 weren't around then, but in the 60s, 70s, and 80s, it was the
16 days of the three-martini lunches. Our management would go
17 out for lunch and would come back half snockered to start
18 making goofy decisions, and the next day, they'd make them
19 totally reverse them. So it was very frustrating and it was
20 very, as well as very highly stressful.

21 Mr. Mitchell was one of our most colorful leaders,
22 who was a visionary. However, he would come, you know, there
23 was one time when I was in the studio when he actually came
24 in the studio, looked at the product model and said that's
25 not what I told you to do, and he kicked the front bumper

1 right off the car. It was on the car, it sat on the floor and
2 everybody just about died on the spot, because he had been
3 known to fire people on the spot, as well. That was just part
4 of the stress.

5 I went to the, my doctor told me, because I had
6 some problems, he told me, either learn how to manage your
7 stress or leave the company. And I drove a car, so I chose to
8 learn how to manage the stress.

9 But the other thing was, back in the 70s and 80s,
10 there weren't all OSHA standards for pollution, that we would
11 drive cars. The company would have people drive cars up and
12 down the hallways and park them in studios, and then people
13 would, some of the designers would just get in the car, start
14 them up, and then rev up the engine and issue the sound.
15 Well, in those days, there no noise pollution as air
16 pollution standards. And that went into paint spraying. There
17 were a lot of jobs that we would, we would a peel off coat on
18 the car, which is like a rubber membrane, which would come to
19 clients, so you could peel the paint off after the show. They
20 would actually spray that in the whole studio and then spray
21 it with color. They would essentially spray entire cars in
22 the studio. You know, you didn't, the fumes got so bad you
23 would walk out, but the problem was, you were working with
24 paint fumes as well. And then, that was, you know, it wasn't
25 every day. That was probably maybe every week or two. But

1 full sized air brush paint bays ran on a daily basis, and
2 they would spray toxic full master ink. And at the end of the
3 day, I'd blow my nose and I'd blow out the color of the
4 paint, whatever the cars they were spraying that day. We put
5 up with it because we drove cars and because that was our
6 job. This is what we did, and this is what you had to put up
7 with. And we figured, GM's going to take of us. You know,
8 they always have.

9 So I guess I expected to get my full insurance
10 when I was retiring. When I retired, before I retired, I had
11 \$180,000 worth of life insurance. And then they reduced it to
12 what they called the ultimate amount and it came down to
13 \$100,000. And this is what I was expecting to do. I figured,
14 well, I'm not working anymore, they're coming back, so I
15 expected the \$100,000 amount. And then, and that was - I
16 retired in July of '02. In April of '02, I had a letter here
17 from the Retirement Servicing Center addressed to me, and it
18 said, "Thanks for retiring at General Motors with ten years
19 or more, participation in life and disability benefit
20 program, you are eligible for continuing life insurance. Our
21 insurance records as of that date, the date of this letter,
22 showed that continuing life insurance is now fully reduced to
23 the ultimate amount of \$100,118. This ultimate amount will
24 remain in effect for the rest of your life and is provided by
25 General Motors at no cost to you." That's all in normal type

1 face. There is a space and another paragraph that says, "This
2 is not a guarantee of the coverage amount." Another space and
3 then in big, bold letters, all capitalized it says,
4 "Important, you should keep this notice with your other
5 valuable papers."

6 So I'm getting a mixed message. On one hand it
7 says well, they might reduce it a little bit. But on the
8 other hand, it says this is very important. You better keep
9 this because this is what you're entitled. So I guess, no, I
10 don't have any iron clad paperwork, but this was before. We
11 hired in, the group that I hired with back in '65, it was
12 unheard of to work for a company for 37 years. And now days,
13 they keep changing company to company. But you put your whole
14 into a company. You put your family on hold because the job
15 is more important, and whenever they call, you jump. When
16 they want you to take your vacation, you take, and so if you
17 want to take your vacation you don't take it. You wait until
18 it's convenient for them so that you can take a vacation.

19 It's a little dictatorship, and we put up with it
20 because we a part of the company, proud to be a part of the
21 company, which was one of the best premier companies in the
22 United States. They took care of their people, it was known.
23 So you put up with a lot of crap, to put it bluntly, just
24 because they are going to take care of me. Now, it's time for
25 my retirement, all of these toxins that are in my system, and

1 yet I don't have any insurance. I guess I just don't
2 understand, you know, just like Mrs. Meder, her husband died
3 and not too loyal because the company left her flat.

4 I've got a wife and two grandchildren, one that's
5 living with me because the daughter can't take care of them.
6 And I've got to struggle to try and take care of my family.
7 But yet, I can't even get life insurance. That's all I have
8 to say. Thank you just for listening, Judge.

9 THE COURT: Thank you, Mr. Schell, a question or
10 two. I understand what you said about life insurance. On
11 health insurances, is it that you don't have health insurance
12 or that you have to pay more for your health insurance?

13 MR. SCHELL: I pay more for my health insurance.

14 THE COURT: Okay, thank you. Mr. Griffiths, do you
15 wish to reply or respond?

16 MR. GRIFFITHS: Your Honor, I mean, just to say
17 that I believe that the letter being referred to by Mr.
18 Schell is the Retirement Services Center letter that was
19 addressed at the January 18th hearing and the April 26th
20 hearing. The one thing I'd like to out to the Court which
21 supports the GUC Trust's position, but I'd like to just put
22 it on record in any case. Ms. Meder submitted a letter which
23 was sent out at the same time to her as the Retirement
24 Servicing Center letter, that we haven't seen before, but it
25 appears to give an overview of each of the insurances being

1 provided by General Motors. And at the bottom of that letter,
2 it specifically says, "All information provided in this
3 letter is subject to the terms and conditions of the
4 applicable group policies or program." And so, the, you know,
5 as more documents are being provided to us by claimants, it
6 appears to support the position that we've taken that the,
7 the Retirement Servicing Center letter could be, or the
8 insurance provided on that letter could be amended or
9 modified, pursuant to the terms of the existing welfare
10 benefits programs.

11 THE COURT: Uh-huh, okay. Alright, Mr. Schell,
12 please remain on the line until I can give my ruling. And
13 next, Mr. Griffith.

14 MR. GRIFFITHS: Your Honor, I believe that Mr.
15 Ronald C. Tanciar, T-A-N-C-I-A-R, is the last claimant.
16 However, I'm not sure he's on the line today. I don't know if
17 he's actually dialed in.

18 COURT CALL: He doesn't appear on court call.

19 THE COURT: I'm sorry, Court Call?

20 COURT CALL: He doesn't appear on court call.

21 THE COURT: I heard the court call, but I didn't
22 hear anything before that. did Mr. Tanciar log onto the call.

23 COURT CALL: No, Your Honor.

24 THE COURT: Oh, okay, thank you.

25 MR. GRIFFITHS: Your Honor, we spoke with Mr.

1 Tanciar before the hearing. He was aware of the hearing, but
2 was unsure that he would appear. But in any event, we will
3 send a copy of the transcript of this hearing to Mr. Tanciar.

4 THE COURT: Okay. Do we have, was that the last
5 one, to your understanding?

6 MR. GRIFFITHS: Yes, Your Honor.

7 THE COURT: Did we hear from Maya Broady?

8 MR. GRIFFITHS: Your Honor, Ms. Brody's being
9 taken care under a different, on those objections that are
10 being handled by my co-counsel.

11 THE COURT: Oh, okay, fair enough, alright. And
12 Mr. Kolaga has Relco. We talked about that at the very
13 outset.

14 MR. GRIFFITHS: Yes, Your Honor, that's not an
15 employee benefit claim, but that can be -

16 THE COURT: Okay.

17 MR. GRIFFITHS: -- handled directly after this.

18 THE COURT: Okay, then, have I now heard all of
19 these claims? Okay. Fair enough. Okay, then folks, I have one
20 more question for you, Mr. Griffiths, and then I think I'm
21 going to be in a position to rule. On Ms. Meder's claim, are
22 we comfortable that we now have all of the relevant paperwork
23 on that?

24 MR. GRIFFITHS: Yes, Your Honor. The, I mean, Ms.
25 Meder supplied us her deceased husband's Retirement Servicing

1 Center letter, but also supplied an additional letter that
2 was provided with the Retirement Servicing Center letter,
3 which is the one I just referred to. I don't know if Your
4 Honor would like to see it, but the, it's contained in
5 Exhibit 4 to our reply at the last page. And this is the one
6 that specifically states that the terms and conditions, that
7 the information provided in the letter is subject to the
8 terms and conditions of the applicable group policies or
9 program.

10 THE COURT: Okay.

11 MR. GRIFFITHS: If Your Honor's concern is
12 surrounding the additional insurance that was taken out. If
13 it makes Your Honor more comfortable, we are more than happy
14 to look into that issue further. But the actual document
15 offering life insurance is actually contained in one of the
16 claimant's papers here today that I saw. It's a straight
17 forward document that offers additional insurance between,
18 you know, in a set window in 2009, which was August 3 to
19 August 14, and was subject to the terms and conditions of a
20 new insurance policy.

21 THE COURT: Was the new policy offered by New GM
22 or by Motors Liquidation?

23 MR. GRIFFITHS: By New GM, Your Honor. You know,
24 as of the master sale and purchase agreement closing date,
25 all of the liability for welfare benefits, other than

1 modifications was transferred to New GM. And the window for
2 providing this new insurance program, which was after the
3 reduction of life insurance, occurred after the closing date
4 of the master sale and purchase agreement. So the closing
5 date of the MSPA was on July 5th, 2009.

6 THE COURT: You used MSPA, a word that, a bunch of
7 letters that's not going to mean anything to claimants. That
8 was the purchase agreement under which New GM bought most of
9 the assets of Old GM?

10 MR. GRIFFITHS: Correct, Your Honor, the master
11 sale and purchase agreement. And so that, that agreement, as
12 it took effect on July 5th, and between August 3 and August
13 14, 2009, former employees of the debtors who are now, whose
14 welfare benefits were taken on by New GM were offered the
15 opportunity to participate in a voluntary life insurance
16 program, at their own cost. But where the benefit, and the
17 reason the program was offered was that the premiums would be
18 at the negotiated rate that had previously been in effect for
19 these claimants. So they would be able to obtain cheaper life
20 insurance than they would otherwise be able to obtain on the
21 open market.

22 I haven't actually read the terms of that life
23 insurance policy myself, but Ms. Meder made a statement that
24 it had a surviving clause, requiring the claimant or the
25 insured to survive for two years after taking out the policy.

1 It sounds like something that would be in an insurance
2 policy. And if that's the term of the insurance policy, then
3 Motors Liquidation Company is neither in a position to change
4 that insurance policy, nor to compensate Ms. Meder for the
5 terms of that policy, it having been taken out with an
6 insurance company that's separate from the debtors and GUC
7 Trust. And the insurance policy, itself, having been arranged
8 by New GM.

9 THE COURT: Okay. Alright, folks, I'm going to
10 issue a ruling on these now, based on the combination of the
11 papers that are in the record, the precedence that we have in
12 this area, precedence of law, and what people told me in
13 argument today. And I'm going to dictate it into the record.

14 In these contested matters in the jointly
15 administered Chapter 11 cases of Motors Liquidation Company
16 and its affiliates, debtor, Motors Liquidation or Old GM,
17 moves, along with the recently formed GUC Trust, which is a
18 trust formed for the benefit of Old GM's creditors, to
19 disallow the welfare benefit claims of retirees and other
20 former employees under Old GM's 169th, 170th, 171st, 172nd,
21 174th, and 177th omnibus objections; an omnibus objection
22 being an objection that covers many people who are similarly
23 situated. The claims of the retirees and former employees
24 before me now involve welfare benefits. Welfare benefits is a
25 word of art that describes benefits offered to employees, at

1 least principally, in the medical and life insurance areas.
2 Those welfare benefits are to be compared and contrasted to
3 pension benefits, which are not the subject of the objections
4 here.

5 As I'll go on to explain in more detail, the
6 claims, insofar as they are based on such welfare benefits
7 for medical coverage or life insurance coverage must,
8 unfortunately, be disallowed. It gives me no pleasure to deny
9 these claims. I fully understand that denial of these claims
10 is likely to result in hardship on the claimants. Though it
11 may be no consolation, I know that the changes in the life
12 insurance and medical benefits have created hardships on
13 hundreds, if not thousands, of similarly situated employees.
14 Even though I'm aware of those facts, I'm compelled to comply
15 with the law, and I'll be discussing that law momentarily.

16 First, however, my finds of fact. On June 1st,
17 2009, Old GM and its affiliates commenced Chapter 11 cases in
18 this court. Among many others, the following individuals have
19 filed timely proofs of claim, Mr. James P. Kurlinski, Mr.
20 Richard A. Schell, Mr. Ronald C. Tanciar. I'm skipping Mr.
21 Sterett, since we're going to examine the remainder of his
22 paperwork. Mohamed A. Fetouh, Gerald S. Kaspzyk and Robert A.
23 Meder, who, although after Meder filed his claim, sadly he
24 passed away, and his wife Marilea Meder filed responsive
25 papers on his behalf. And I heard Mrs. Meder's argument

1 today. I heard most of those people orally again in today's
2 hearing. I've considered both the written submissions and the
3 oral arguments in reaching these decisions.

4 Pursuant to procedures that were set up earlier in
5 Old GM's bankruptcy case, the debtors or the GUC Trust filed
6 omnibus claims objections to the claims of the people I
7 mentioned, among many, many others. As I indicated, an
8 omnibus claims objection is one that applies to many people
9 or entities at the same time, generally because it involves
10 similar or identical issues. The debtors and then the GUC
11 Trust filed those objections in pursuant to their fiduciary
12 duty; that is, a duty as a matter of trust to the remainder
13 of the creditors of Old GM's estate. Which duty involves,
14 among other things, allowing claims that deserve to be
15 allowed, but at the same time, objecting to those that don't.
16 The omnibus objections before me present, before me were
17 directed at claims of retired or former employees of Old GM.

18 Each of the folks who I'm dealing with now, timely
19 responded to the GUC Trust's objections. It is possible,
20 though on this round, I don't think it's so, that people
21 have, or at least it hasn't been shown to me, that people may
22 have claims against New GM. And if they do have claims
23 against New GM, this doesn't have any effect on those claims
24 one way or the other. What we are talking about today,
25 instead, is claims against Old GM.

1 Now, turning to my conclusions of law, including
2 certain mixed findings of fact of law, and here I'm going to
3 get a little bit technical. A proof of claim is prima facie
4 evidence of the validity and amount of the claim. And the
5 objector, which means Old GM or the GUC Trust, bears the
6 initial burden of persuasion. See, In Re: Oneida Ltd, 400
7 B.R. at page 389, that being a 2009 decision by Judge Cropper
8 of this Court. What that means, translating from the Latin,
9 is that once a claimant, like each of the folks who was on
10 the phone here today, or who wasn't on the phone but gave me
11 a similar written objection, files a proof of claim, assuming
12 at least if it's satisfactory, which all of here have been
13 found to be satisfactory in the first instance. Those proofs
14 of claims would be good enough to get paid the amount set
15 forth in the claim, unless there was an objection. But once
16 there is an objection to a claim, the burden shifts to the
17 claimant, if the objector produces evidence equal in force to
18 the claim that was previously filed, if the material in that
19 objection, if believed, would refute at least one of the
20 elements of the claim that's essential to the claim's legal
21 burden. Then the burden is shifted back to the claimant, and
22 the claimant must then prove by a preponderance of the
23 evidence that under applicable law, the claim should be
24 allowed.

25 Now, here we have exactly that situation. Each of

1 the claims was prima facie okay. The debtors and the GUC
2 Trust then objected and met their burden, which meant that
3 the claimant's once more had the burden. Then I decide what
4 the claimants are entitled to, based on all of the evidence
5 that's before me.

6 Now, that's all by way of background as to the
7 legal burdens that each side has. As I said, now I decide the
8 issue. Here, I am required to find, and I do find, as a mixed
9 question of fact and law, that the claimants haven't met
10 their burden to show that the welfare benefits that were
11 changed on them vested, which means putting it in plainer
12 English, they haven't proven that they had an agreement under
13 which the benefits couldn't be taken away.

14 In dealing with claims of GM former employees,
15 whose situations were very, very similar to the claims that
16 are before me now, the US Court of Appeals for the Sixth
17 Circuit, in a case called Sprague v. General Motors Corp.,
18 explained that to, "vest benefits is to render them forever
19 unalterable. Because vesting of welfare plan benefits is not
20 required by law, an employer's commitment to vest such
21 benefits is not to be inferred lightly. The intent to vest
22 must be found in the plan documents, and must be stated in
23 clear and express language." Sprague v. General Motors Corp.,
24 133 F.3d 400, that's Sixth Circuit, 1998. As the Sixth
25 Circuit observed in the Sprague decision, at page 401 of that

1 opinion, "Most of the summary plan descriptions unambiguously
2 reserve GM's right to amend or terminate the plan."

3 What the language that I just quoted means is that
4 while the claimants may very well have had many rights to
5 benefits, and I assume for the purpose of this analysis, they
6 did have rights as they've alleged them. GM had the right to
7 terminate those benefits. And if it had the right to
8 terminate them, it also had the right to alter them. Thus,
9 although the benefits existed at one time, they could be
10 changed. And, as we all know, GM changed them.

11 Now, I'm intentionally describing documents and
12 plan descriptions into plain English, though many of us would
13 agree that I might be stating it more clearly and in plainer
14 English than it was originally stated. But the documents did,
15 in fact, say what Old GM and the GUC Trust say they said. I
16 invite people, if they want to, and of course, I invite any
17 appellate court reviewing my work, to read the Sprague
18 decision in greater detail, and to read the plan documents of
19 each employee in greater detail. That's why, by the way, for
20 any folks whose discussion didn't already cover it, I asked
21 employees if they got any pieces of paper that made the
22 promises that might go beyond what I've seen from the record,
23 what GM gave to its employees. I did not want to fail to
24 consider that some employees might have gotten better deals
25 than everybody else did, or at least everybody else that I

1 know about did. But for each of the folks here, there is no
2 evidence of any special deals.

3 Now, many claimants have talked about the personal
4 hardships. And they've talked about decisions that they made
5 based on the documents they read at the time. And I well
6 understand the frustration expressed in this regard, but the
7 rights that claimants were getting were described in the
8 benefit plan documents, and those same documents said that GM
9 had rights, which it later availed itself of, to amend its
10 plans.

11 For example, one of the summary plan descriptions
12 that was cited by one of the claimants stated unequivocally,
13 it stated quite clearly, and I'm quoting, "General Motors
14 Corporation reserves the right to amend, change or terminate
15 the plans and programs described in this booklet." Now, I
16 realize how frustrating this is, but because the plan
17 documents reserved or maintained GM's rights to amend or
18 terminate the plans, these claimants were buying into or
19 making decisions about plans that explicitly gave GM the
20 right to change or terminate them down the road.

21 I, I should also add a little more about Mrs.
22 Meder, because I heard exactly what she told me. Of course, I
23 felt very badly about it. And I looked very carefully,
24 especially given the hardship, to make sure that I wouldn't
25 be making a mistake in this area. Letters she referred to,

1 then sent, of course, to her late husband, are letters dated
2 many years before these bankruptcy cases, that told the
3 recipients at a later time that their coverage was being
4 reduced. The fact that Old GM was able to reduce the ultimate
5 amount of insurance coverage so many years ago underscores
6 the fundamental point. Old GM always had the right to modify
7 these particular benefits. The letters sent to Mr. Meder
8 stated, and I'm quoting, "This is not a guarantee of the
9 coverage amount." I wish for her account it were otherwise.
10 The letters did not create new contracts between the debtors
11 and the employees. There is no evidence indicating that Old
12 GM was offering or promising, through these letters,
13 particular benefits to induce action or inaction by the
14 claimants.

15 I do also want to say with respect to Mrs. Meder's
16 claim, that nothing I'm deciding today affects in any way her
17 rights, if any, against either New GM or the insurance
18 company. All of those rights are unaffected by my ruling. I
19 don't know if there are any such rights, but whatever I'm
20 ruling on today doesn't affect them in either event.

21 In sum, because the claimants' rights to welfare
22 benefits didn't vest, and because such benefits were subject
23 to modification or termination, the claims that I have before
24 me today must be disallowed. The GUC Trust is to settle an
25 order in accordance with this decision. Settling an order

1 means, contrary to what it sounds like, proposing an order
2 that I sign that is sent out to people who have the right to
3 comment on whether that order, as presented to me for
4 signature, fairly and accurately represents my ruling.
5 Failing to object to the form of the order has nothing to do
6 with the right to appeal the order and to argue to a higher
7 court that I got the legal or factual issues wrong.

8 After that order is entered, each of the people
9 addressed by this ruling has the right to appeal the order,
10 to have it considered on appellate review, to have it
11 considered by an appeals court, which for a bankruptcy judge
12 is the district court. The time to appeal in a bankruptcy
13 case is much more limited than it is in other areas of the
14 law. In bankruptcy, you get just 14 days. And although, and
15 again, this seems counter intuitive, although the appeal goes
16 to the district court, the appeal is filed, the notice of
17 appeal is filed in the bankruptcy court. Again, I'm
18 emphasizing that in bankruptcy you get 14 days. But the time
19 to appeal is going to run from the time that my order is
20 ultimately entered, which will be some days from now, not
21 from the time that I'm dictating this decision today.

22 If you are not objecting to the form of the order,
23 but you nevertheless want to appeal it, you have that right,
24 as long as you file a notice of appeal within the 14-day
25 deadline, after the order is entered. And, of course, you

1 must comply with the other requirements for prosecuting the
2 appeal, most of which will be imposed by the district court,
3 although some of the papers have to be filed in the
4 bankruptcy court.

5 Folks, once more, I, I want to note that I
6 understand how hard this case has been on you and on other
7 former employees who are similarly situated. But I'm sworn to
8 comply with the law, and that's what I'm doing today.

9 Okay, those folks whose claims have already been
10 argued and appealed, and ruled on, are free to either stay on
11 the line or to drop off, as they prefer. I know we have the
12 Relco matter, and I think we may have one equity claim. In
13 any event, does that take care of it on your end, Mr.
14 Griffiths?

15 MR. GRIFFITHS: Yes, Your Honor, and just
16 note, we share the Court's concern with respect to Ms.
17 Meder's insurance policy with GM. I'll obtain a copy of the
18 insurance policy and review it just to confirm there's
19 nothing Ms. Meder can do, and will speak to her separately.
20 And then secondly, with respect to settling orders, we've
21 agreed with chambers that when we settle orders, we don't
22 file them on the docket, we just send them out to the
23 claimants.

24 THE COURT: Well, the notice of settlement should
25 be filed on the docket. The order would simply be an

1 attachment to the notice of settlement and will have a blank
2 where it would call for my signature.

3 MR. GRIFFITHS: Very well, Your Honor.

4 THE COURT: Then, after I've had a chance to see
5 any objections to the form of your proposed order, what we
6 would do is re-read the order as proposed, make sure that
7 it's consistent with the ruling, and then we sign it. And
8 that's why, excuse me, we ask for a word processing version
9 of the order to be sent with the notice of settlement to
10 chambers, so that if there are no objections to its form, or
11 if there are after we've decided whether the order, as
12 proposed, is the way that I would want to enter it, then I
13 sign the order, or more exactly authorize chambers to sign my
14 name.

15 MR. GRIFFITHS: Very well, Your Honor, so going
16 forward we'll file the notice of settlement with each of the
17 orders.

18 THE COURT: Very good. Thank you.

19 MR. GRIFFITHS: Your Honor, yes, Ms. Greer of
20 Dickstein Shapiro, our co-counsel will be handling the rest
21 of the hearing.

22 THE COURT: Okay, thank you.

23 MR. GRIFFITHS: Thank you, Your Honor.

24 MS. GREER: Good morning, Your Honor. Stefanie
25 Greer from Dickstein Shapiro on behalf of Motors Liquidation

1 Company GUC Trust. Your Honor, we have a number of matters
2 on today, some uncontested. Do you have a preference into the
3 order we tackle these?

4 THE COURT: No, I'm pretty much at your pleasure
5 and in fact, you can skip around if you choose, as long as
6 you tell me which tabs of the binder I need to focus on.

7 MS. GREER: Okay, Your Honor. Let's start, I'll
8 just run through quickly, the uncontested matters, so we can
9 get those out of the way. We have the 277th omnibus
10 objection, which is an objection based on insufficient
11 documentation. Four of those claims have been adjourned, 15
12 are going forward today.

13 The 278th omnibus objection. Those are incorrectly
14 classified claims. Five of those are going forward. None of
15 those have been adjourned.

16 Finally, we have the 279th omnibus objection.
17 Those are no liability claims, claims either which were the
18 responsibility of a party other than the debtors, claims
19 which relate to a prepetition settlement agreement, or
20 prepetition judgment in favor of the debtors, or claims
21 assumed by New GM. One of those has been adjourned. Four we
22 have withdrawn, based on additional information, and 17 of
23 those are going forward today. So for, I think that's it for
24 the uncontested matters, so we can, if Your Honor is
25 amenable, we can submit orders to chambers accordingly.

1 THE COURT: Yes, on any objections where you
2 haven't gotten a response and you haven't adjourned them for
3 further consideration of the documentation or for
4 negotiation, your motions to disallow those claims are
5 granted.

6 MS. GREER: Thank you, Your Honor. Next, Your
7 Honor, we have the 276th omnibus objection, which was on for
8 the first time today, but it only addressed two claims, one
9 of the - four claims actually, two of them have been
10 adjourned and two of them were filed by Ms. Meya Broady, and
11 those are going forward today. I'd like to take that next, if
12 that works for you.

13 THE COURT: Sure.

14 MS. GREER: Okay. I believe Ms. Broady is on the
15 phone.

16 THE COURT: Are you on the phone, Ms. Broady?

17 MS. BROADY: Yes, I am, Your Honor.

18 THE COURT: Okay, now this one being in a
19 different category than the ones I just ruled on, we're going
20 to go back to the traditional method. I'll hear from you
21 briefly, Ms. Greer, then I'll hear from Ms. Broady, then I'll
22 give you a chance to reply to anything that Ms. Broady said.
23 And then I'm going to give Ms. Broady a chance to what we
24 call sur-reply, which is to be heard after the reply. But the
25 last two remarks are limited to the stuff that was said

1 orally the first time. It's not an invitation to do over the
2 whole argument. So go ahead, Ms. Greer.

3 MS. GREER: Thank you, Your Honor. This, this
4 objection is two claims, Claim No. 70896 and Claim No. 70925.
5 The claims were filed, both filed in February of 2011 by Ms.
6 Broady. These were objected to as part of the 276th omnibus
7 objection to claims on the basis that they were both filed
8 late, certainly well beyond the November 30th, 2009 bar date.
9 So these claims were both 14 months late.

10 Ms. Broady characterizes the claims as
11 administrative in nature. They are claims based on unpaid
12 disability, Dex-Cool engine damage and employment
13 discrimination. The claims seek \$400,000 in the aggregate.
14 There is some confusion on our part as to whether the claims
15 are, if she really intends to assert a \$200,000 claim, but
16 she just filed, you know, filed it twice, or if she really
17 intends to pursue a \$400,000 claim. So, for the purposes of
18 this discussion, given some correspondence Ms. Broady had
19 with our co-counsel, we assume she's going forward on both
20 claims for an agreement of \$40--\$400,000, excuse me.

21 As set forth in our reply, Your Honor, none of
22 these claims are administrative in nature. The unpaid
23 disability and employment discrimination claims, for example,
24 arise from Ms. Broady's employment with the debtors from 1984
25 to 1992, which of course, is well prior to the filing of the

1 debtors' Chapter 11 cases. The third alleged basis for
2 recovery arises from engine damage, which, by Ms. Broady's
3 own admission, occurred in 2007 to her 2001 Pontiac. It's
4 clear, Your Honor, that each of these claims are general,
5 unsecured claims arising out of a prepetition relationship
6 with the debtors, and are subject to the original bar date.

7 So that's sort of our first issue. I think based
8 on what Ms. Broady's filed, it appears that she's asserting
9 that the administrative bar date would apply and, of course,
10 it is the GUC Trust's view that these are unsecured
11 creditors, I'm sorry, unsecured claims, subject to the
12 original bar date.

13 Second, I want to point out for the Court that Ms.
14 Broady received actual notice of the bar date. We filed an
15 affidavit, together with our reply, which confirms that Ms.
16 Broady was served at the address, which is on her proof of
17 claim, the same address that she was served with the
18 administrative bar date notice. And that that notice, that
19 notice was not returned to Garden City Group. I would like to
20 point out, Your Honor, there was an error on our part, or on
21 the part of someone on our end, in communications with the
22 claims agent. The 279th, or 276th omnibus objection says that
23 it is a constructive notice objection. So it indicates that
24 Ms. Broady did not get actual notice. But in fact, she did
25 get actual notice. We've confirmed that. Like I said, we

1 filed the affidavit. But I just wanted to make sure that I
2 corrected for the record what is in the 276th omnibus
3 objection, which is a constructive notice objection. So, if
4 you'll excuse our error, and I've corrected it, hopefully,
5 for the record.

6 Third, Your Honor, to the extent that Ms. Broady,
7 or to the extent that Ms. Broady's claims are in fact late,
8 as the GUC Trust would argue, the next step is, of course,
9 whether she can establish excusable neglect under Pioneer and
10 in Second Circuit Progeny. As we all well know, the Second
11 Circuit focuses on the reason for the delay. Though Ms.
12 Broady has provided us with an extensive amount of paper in
13 her reply, I don't see anything in there which speaks to the
14 reason for the delay here. In fact, most of the papers, you
15 know, filed by Ms. Broady, excuse me, really speak to what
16 she views as the merits of the claim. So there isn't anything
17 in the record, from our point of view, that establishes
18 excusable neglect. The Second Circuit takes a hard line in
19 applying the Pioneer factors, and there is nothing in Ms.
20 Broady's papers which indicate excusable neglect.

21 In short, given Ms. Broady received actual notice
22 of the bar date, she has general, unsecured claims, and she
23 can't establish excusable neglect, the GUC Trust submits that
24 here claims should be expunged.

25 THE COURT: Anything further, before I give her a

1 chance to be heard?

2 MS. GREER: Not unless Your Honor has any
3 questions.

4 THE COURT: Okay, Ms. Broady.

5 MS. BROADY: Yes, Your Honor.

6 THE COURT: I'll hear your argument now, please.

7 MS. BROADY: Your Honor, yes, General Motors
8 demonstrated bad faith over 20 about 20 years, and if not
9 for my disa-severe disability rulings as well as the American
10 with Disabilities Rules and Regulations, I would not be. And
11 so you can see from the documentation that you have in your
12 possession, I have kept this documentation for like 20 years.
13 I had no reason to not file for unsecured claims. I did not,
14 to my knowledge, receive any information with reference to
15 bar date claims. I did not receive this as the attorney
16 specified. In her preliminary statement that she mailed out
17 to me, she submitted certain documentation, but only certain.
18 And I ask, Your Honor, that you look at the whole picture.

19 They, I feel that they had a, a responsibility
20 under the pre-confirmation rule to submit, as under the new
21 bankruptcy law and practice, Rule 49. They had, they should
22 have objected to, on the claim if they felt that it was
23 improper, but they did not. The only time they objected to it
24 is that when I talked with Conray Tseng on I believe it was
25 in, it was in, let me get my notes here. When I talked with

1 Conray Tseng. He mailed me out an e-mail dated February the
2 23rd, 2011, that per our conversation, your two claims, one
3 with an addendum and one without. Well, the first claim that
4 I filed with an addendum, I filed it with lots of
5 attachments. And the second claim I filed, I also filed with
6 an attachment. And by letters to him, dated March the 25th,
7 2011, which also the debtors' attorney did not submit in her
8 preliminary statement, it will show that I asked Conray to
9 put in writing that he would include me in the 2009-2010
10 claims. And he did put some things in writing, but he failed
11 to do that. What he wanted to do, the attorney Conray Tseng,
12 wanted to do, and also this is in my statement dated March
13 the 25th, 2011, he wanted me to combine both claims into one,
14 as well as cancel them. And he wanted to cancel them because
15 he wanted, he said that he would file them for the 2009-2010.
16 So since he didn't put this in writing, that's why I
17 disagreed to cancel the administrative claims.

18 I was told that if I filed administrative claims
19 it would cover a variety of things, not just the attorney's
20 expenses. So I feel that a lot of carelessness came from the
21 debtors' attorneys' side. And that a lot of
22 misrepresentations also occurred by the debtors' attorneys.
23 We would not be here, like I said, if they complied with the
24 America's Act with, of with Disabilities.

25 I also feel that, Your Honor, that my claims are

1 justifiable, that I have a preponderance of evidence. And had
2 I received the proper paperwork to file these claims, I would
3 have. Due to the fact that I kept the evidence surrounding
4 General Motors' hostile environment towards me, the fact that
5 I had to file an EEOC claim against them. Also, the fact that
6 I submitted evidence that they did not pay me for the
7 disability benefits.

8 The second claim also includes the fact that they
9 should have paid me under my basic life insurance that I had
10 with them, and they failed to do that, as well. Every time
11 that I submitted documentation to them to receive these
12 benefits, they either did not respond or they denied them.

13 So, I ask the Judge to look at the whole picture
14 here. And I ask him to set a precedence, that a precedence be
15 established in hopes to eliminate future misdeeds from
16 happening to others. And I implore the Court to approve both
17 claims that were filed within the mandatory timeframe.

18 The debtors also indicated in her statement that
19 she didn't feel that I had excusable neglect. Under
20 bankruptcy law and practice, 4823, it says that, "Excusable
21 neglect. Not filed, creditor failed to file a proof of claim
22 because of misrepresentation by present debtor." So,
23 therefore, I feel that based upon these rules and the fact
24 that I never did receive the original bar date that she
25 specified, that my claims should be approved and that I

1 should be given the opportunity to file these claims. They
2 should be reconsidered and I should be able to file the
3 appropriate paperwork for these claims for 2009 and 2010
4 because I did not receive the information that she specified.
5 Perhaps that they mailed it after the fact, I really don't
6 know, but I did not receive it, to my knowledge, and I have
7 not received it as of today, as she has indicated.

8 THE COURT: Okay, thank you. Ms. Greer, reply.

9 MS. GREER: Certainly, Your Honor. Briefly,
10 there's a long litany of reasons why, Your Honor, why the
11 underlying claims have no merit, including the fact, as Ms.
12 Broady acknowledges, they arose over 20 years ago. So it's
13 pretty clear to me that any applicable statute of limitations
14 would have long since run at the time of the debtors'
15 bankruptcy filing. But that's not why we're here today. This
16 issue is about whether the claims were filed, or should be
17 deemed filed in a timely manner.

18 The presumption that a recipient receives an item
19 mailed to the correct address applies here. Ms. Broady has
20 done nothing to overcome that presumption. And, indeed, the
21 affidavit in the record, which we filed, confirms that the
22 bar date notice was in fact sent to Ms. Broady at the address
23 on her proof claim, and also at the same address where the
24 administrative bar date notice was sent, and she received
25 that one, by her own admission.

1 Your Honor, Ms. Broady's presentation, in her -
2 in Ms. Broady's presentation, she also seeks to blame the
3 debtors' attorneys for her failure to file the claim in a
4 timely manner. The documents attached to her response are
5 from 2011, long since the bar date. So even if it were true,
6 and it certainly, we would submit it is not, that Mr. Tseng
7 at Weil, Gotshal, or anyone else, misled Ms. Broady, it
8 certainly has nothing to do with her having filed the claim
9 on time. All of that correspondence was well after the bar
10 date. In fact, if upon a review of the exhibits that Ms.
11 Broady filed, you will see that the correspondence with the
12 debtors' counsel was about whether these claims were really
13 one claim or two claims. And what Mr. Tseng was asking Ms.
14 Broady to agree to is simply that it was really just about
15 one claim, so it was a \$200,000 claim. Basically, you know,
16 your standard duplicative claim objection, which we
17 otherwise, you know, would have made, so if the claims
18 weren't late. Unless Your Honor has any questions, that's
19 all I have.

20 THE COURT: Okay, thank you. Ms. Broady, do you
21 have anything to say finally, but limited to what Ms. Greer
22 said in her reply.

23 MS. BROADY: Yes, Your Honor, under the current
24 section of duties I have in front of me, Author David Ross
25 and deduces the bar code of six duties that he believes all

1 humans would recognize and for written socially binding
2 contracts, because of prima facie duties, we knew that they
3 would be obvious upon first examination of any situation. In
4 addition to duties, people explicitly agree to perform. They
5 agree to always act in the interest of fidelity granted to
6 self-improvement, and in finance, justice and non-injury to
7 others, because they overlap the contract prima facie duties
8 of not really guideline for more action.

9 I feel that bad faith has been constantly
10 exhibited by the defendant. I have, do constant good faith
11 over the 20 years, trying to resolve this matter with the
12 defendant and their attorneys. I have kept, like I said,
13 documentation for like 20 years, whether or need it or not. I
14 have looked through the various files and folders for the
15 past two years and I do not have the documents that the
16 debtors' attorney indicated. Had I had this, I have no excuse
17 not to file the claim. But had I received the information in
18 the time period that the debtors attorney's specified, I
19 would have definitely filed a claim, or I would have had one
20 of my daughters, who is a paralegal, to file the claim. I did
21 not receive the information, the bar date information to file
22 the claim.

23 And then when I finally did get the information
24 from them, as you will see the e-mail from me dated 1/7/2011,
25 I tried for months to ascertain information from the debtors.

1 But they did not return any of my phone calls. I didn't hear
2 from there. And as specified in this e-mail dated 1/7 of
3 2011, and that's when I received the administrative claims
4 because I thought that if I filed the administrative claims,
5 based upon information given to me, that I would, wouldn't
6 have to do the secured or unsecured claim. I did not become
7 privy to this information about the secured and unsecured
8 claims until after the fact. So I, I feel that I should not
9 be punished, Your Honor, because I did not receive this
10 information. And, also, I feel that the debtors' attorney
11 used first information obtained during their discovery to
12 their advantage in this case and not to my advantage. To
13 expunge this case will be an injustice, you know, to not just
14 for me, but also it will be an injustice to others.

15 THE COURT: Okay, thank you. Everybody sit in
16 place for a second. Alright, folks, I am reclassifying this
17 claim from an administrative claim to a prepetition claim.
18 And then I am disallowing it for a combination of legal
19 reasons and matters as to which there is an exercise of
20 discretion. And the following are my findings of fact,
21 conclusions of law and bases for the exercise of discretion
22 in this regard.

23 First, as facts, I find that the claimant's claim,
24 or actually claims, were filed after the bar date in this
25 case, the bar date being the word in the bankruptcy community

1 for the deadline of filing proofs of claim. I also find that
2 most of the events in question go back a period of 20 years,
3 and at least seemingly raise statute of limitations issues,
4 if they don't plainly so, do so, but that I don't need to
5 address the statute of limitations issues at this time. And I
6 just leave them for another day, if it ever matters.

7 I further find that the debtor has proven to my
8 satisfaction that notice of the bar date was sent out in
9 accordance with the affidavits that were submitted on the
10 paperwork on this motion. And I further find that they were
11 properly addressed, as evidenced most significantly by the
12 fact that the identical address was used for the admin
13 deadline for claims. And it is admitted that the notice of
14 the admin bar date was properly received.

15 I simply find as a fact that while the debtors'
16 proof of receipt is rebuttable, the weight of the evidence
17 causes me to believe that the notice was received, perhaps
18 misfiled, perhaps not read, whatever, but that actual notice
19 was received.

20 I further find as facts that, or as mixed
21 questions of fact and law, that the estate would be
22 prejudiced, and by the estate, I mean General Motors or Old
23 GM's other creditors by the dilutive effect of this claim.
24 And that no facts have been presented to me showing excusable
25 neglect or any reason for the delay.

1 Now, as conclusions of law, I find that when, as
2 here, events giving rise to the claim all took place before
3 the filing of the Chapter 11 case, they represent prepetition
4 claims, rather than postpetition claims. While there is
5 additional law in this circuit and elsewhere, what we call
6 the McFarland's Rule in the Second Circuit, the Jartram Rule
7 and Mammoth Mart Rules, coming from other circuits as to
8 additional requirements that might have to be shown to
9 establish admin claims. Here, we don't even need to reach
10 them. I do not have transactions here with a postpetition
11 debtor. I do not have allegations of a benefit to the
12 postpetition debtor. I do not have allegations of a
13 postpetition tort. These are, for all of those reasons,
14 prepetition and not postpetition claims.

15 I further find that the claims must be disallowed.
16 Because I've found that they were filed late, and that the
17 debtor had actual notice, these claims cannot be considered
18 unless excusable neglect for the late filing has been made.

19 I need to emphasize something very significant
20 here. In a few cases earlier in the Old GM case, I've
21 expressed reservations about late filed claims, when the
22 claimants were served only by publication and not given
23 actual notice by mail. And they lived in rural areas of
24 Mississippi or similar locals, where I could not, with
25 comfort, make a finding. I didn't rule on it, but I expressed

1 reservations as to whether I could find that notice of
2 publication in New York Times or The Wall Street Journal
3 would be reasonably calculated to be received by a person
4 living in rural Mississippi, who only got her knowledge from
5 Fox and friends on TV. I don't have any concerns of this
6 character here. I do find, and I'm comfortable with the
7 quality of notice.

8 And therefore, we get into the matter of excusable
9 neglect. Here, I find no good reason has been shown to me for
10 the failure to file on time. I find prejudice to the
11 remaining creditors and the requirements of Pioneer for late
12 filing proof of claim, excusable neglect have not been
13 satisfied.

14 Ms. Greer, you're to settle an order in accordance
15 with the foregoing, stating in substance that for the reasons
16 set forth on the record, the claim is first reclassified and
17 then disallowed. The time to appeal the resulting order will
18 run from the time of the entry of that order, and not from
19 the time of this dictated decision. Okay, next matter,
20 please.

21 MS. GREER: I'm sorry -

22 THE COURT: Oh.

23 MS. GREER: -- Your Honor, just one question, if
24 I may. In your presentation of the decision, you said that
25 the debtor had actual notice. I just want to make sure that

1 the record is clear that Ms. Broady did, just in case there
2 is an appeal

3 THE COURT: I may have misspoken. I do mean, of
4 course, that she had actual notice.

5 MS. GREER: Thank you, Your Honor.

6 MS. BROADY: Your Honor, may I ask the
7 defendant's attorney a question. What document do you have in
8 your possession to validate that I received my, this claim in
9 2009?

10 THE COURT: Forgive me, Ms. Broady, this is not
11 the English parliament. One party does not ask another party
12 questions. I ruled on the evidence that was presented before
13 me, which included, among other things, the proof of service.
14 And I understand you likely don't agree with this ruling, but
15 at this point, with respect, and I'm saying it very softly,
16 but I should state that I really mean it, if you don't agree
17 with my decision, your remedy is appeal. But I've already
18 ruled on the matter. Now, Ms. Broady, you're free to stay on
19 the phone or leave, as you see fit, but we're going to the
20 next matter.

21 MS. GREER: The next matter I have, Your Honor,
22 is the 27th omnibus objection, which was incorrectly
23 classified claims. This is the claim of Marvin Eccles (sp).
24 I'm not sure if Mr. Eccles (sp) is on the phone.

25 THE COURT: Mr. Eccles, are you on the phone?

1 Evidently not. Is this another equity claim, seeking
2 treatment as a claim on debt.

3 MS. GREER: This is actually a products liability
4 claim, which is seeking priority or secured status. It's a
5 claim arising from the failure of a brake system. We filed
6 our reply. I'm happy to rest on those papers, if that's Your
7 Honor's preference.

8 THE COURT: Okay, yes, that claim will be
9 disallowed for the reasons set forth in your papers.

10 MS. GREER: Reclassified, Your Honor.

11 THE COURT: Excuse me, as a prepetition claim?

12 MS. GREER: Yes, reclassified as a general,
13 unsecured claim. And I think Your Honor, we're not seeking
14 disallowance of the claim. We simply could not get Mr. Eccles
15 to agree that the claim should be reclassified.

16 THE COURT: He was continuing to argue that it was
17 secured?

18 MS. GREER: Yes, sir.

19 THE COURT: Without having given us any evidence
20 of a security agreement or a rule of law that elevates his
21 claim to secured status?

22 MS. GREER: Your Honor, I think you could tell by
23 the reply that he was a little bit confused as to the
24 application of the law. So we just put in a simple reply. We
25 tried to get in touch with him a number of times and without

1 success to convince him otherwise. So I, at least my
2 understanding is the plan is to reclassify it and allow it,
3 but just could not get his agreement to do so. It's a
4 deminimus claim.

5 THE COURT: Right, well that objection is
6 sustained. It seems to me that in part, what I was referring
7 to earlier was based upon my review of different papers. But
8 your objection on this one is no less valid.

9 MS. GREER: Thank you, Your Honor.

10 THE COURT: Okay.

11 MS. GREER: Last, Your Honor, the Relco claim.

12 And I understand Relco's counsel is on the phone.

13 THE COURT: Okay, you've been waiting a while, Mr.
14 Kolaga, are you still with us? Mr. John Kolaga, of Damon &
15 Morey?

16 MR. KOLAGA: Yes, I'm here, can you hear me?

17 THE COURT: Yes I -

18 MR. KOLAGA: Can you hear me?

19 THE COURT: Yes, I can. I know you've been waiting
20 a long time. There were a lot of people ahead of you.

21 MR. KOLAGA: I'm here, Your Honor, not a problem.

22 THE COURT: Okay, I have, of course, read the
23 papers on this. Go ahead, Ms. Greer, I'll hear your objection
24 and Mr. Kolaga's response, reply limited to what was said in
25 oral argument, and sur-reply limited to what new stuff was

1 said in reply. Go ahead.

2 MS. GREER: Certainly, Your Honor. Relco has not
3 cleaned up its property or tested it for contamination, even
4 though there has been known contamination in the neighboring
5 sites since 2001, according to the exhibits in Relco's reply.

6 In the proof of claim, Relco seeks recovery, and I
7 quote here, "to the extent there has been contamination on
8 the property." Relco further states, "Claimant is not
9 currently aware whether its real estate has been
10 contaminated, or whether any PCBs or other contaminants from
11 the General Motors parcel have migrated to claimant's
12 parcel." I've contacted Relco's counsel various times to try
13 to get an understanding as to whether the claimant really
14 believes there has been contamination on the property. All
15 they've told us, Your Honor, is that the neighbor's property
16 is contaminated, and it is their belief that that is
17 sufficient.

18 Your Honor, today, we seek to expunge the claim
19 on the basis of 502(e)(1)(B), or alternatively, on the basis
20 that Relco cannot establish a prima facie claim, given that
21 it relies wholly on contamination to the neighboring
22 property, which we would submit, as a matter of law, is
23 insufficient.

24 First, to the extent Relco, and I should say that
25 the nature of Relco's claim against the debtors isn't clear.

1 It's not clear whether they are seeking a direct claim or
2 whether they are seeking a claim under CERCLA, given the
3 debtors' position as a PRP. It just not clear, so I'm going
4 to go through each of those possibilities and we can address
5 those in turn.

6 First, to the extent Relco is seeking recovery for
7 reimbursement or contribution, the claims are clearly barred
8 under 502(e)(1)(B). That's the only element, at least
9 according to the papers that Relco filed, they appear to be
10 challenging.

11 As this Court found in Chemtura and Lyondell, and
12 as Judge Lifland found in Alper Holdings, a claim remains
13 contingent where the scope amount and form of liability is
14 undetermined. Here, Relco hasn't paid any claim. Nobody's
15 asserted a claim against Relco in connection with this
16 property. Even if Relco were correct that the property were
17 contaminated and, of course, the GUK Trust does not concede
18 that's the case, as the Court pointed out in Lyondell, and
19 again, I'm going to read from the case, as it's directly on
20 point here. "Where the need for contamination is known, but
21 the amount, if any, to be paid for the remediation is not,
22 the claim remains contingent."

23 THE COURT: What page were you reading from, Ms.
24 Greer?

25 MS. GREER: Page 247 of Lyondell, Your Honor,

1 Note 22.

2 THE COURT: Alright.

3 MS. GREER: It's the GUK Trust's position that the
4 reasoning behind 502(e)(1)(B), and the decisions cited would
5 plainly apply here. And I'm going to quote again from the
6 decision, for the same reason, and this Lyondell, 249 to 250.
7 "Even though the need for remediation of the underlying
8 environment site might be obvious, the EPA or state
9 environmental agency might have a multitude of different ways
10 of getting a remediation done. And any one of those means
11 might or might call for or result in payment by the separate
12 PRP that is asserting the claim against the debtor. And the
13 PRP might or might not wind up actually making the payment
14 for which it would be seeking reimbursement or contribution."

15 So, Your Honor, based on the case law in this
16 district, the GUK Trust submits that any claim would be
17 contingent, would within 502(e)(1)(B) and should consequently
18 be disallowed and expunged. I'd also point out that one of
19 the policies behind 502(e)(1)(B) is to get the claimant to
20 actually clean up the property, if they know there is a
21 contamination, and to do it quickly, so that makes sure that
22 they have a claim. In this case, it's exactly the opposite.
23 If, even if Relco, according to its papers, Relco knew or
24 believed there was contamination as far back as 2001, but
25 they've done nothing. They haven't tested the property. They

1 just rely, their conclusions rely on a sightings of men in
2 space suits on the property, and contamination of the
3 neighboring property.

4 Second, Your Honor, if this claim doesn't fall
5 within 502(e)(1)(B), it should clearly be barred under 502(b)
6 because it fails to establish a prima facie claim. It's
7 Relco's burden to demonstrate the validity of the claim. And
8 their reliance on the alleged contamination of the neighbor's
9 property is insufficient as a matter of law to meet this
10 burden. There's just no evidence supporting contamination.

11 I'd also point the Court to the Township of North
12 Bergen case, where the claimant relied on a leaking pipe in
13 the neighborhood property in order to establish its claim.
14 The court said, and I quote, "Simply stated, there was no
15 evidence that the property, as opposed to adjacent
16 properties, was contaminated, or that any actual
17 contamination was caused by defendants." And that's the case
18 here, Your Honor.

19 So, in short, any way you look at it, there's no
20 claim here. Relco's claim was clearly meant to be a
21 protective claim, it wasn't mean to assert any - it doesn't
22 assert, and can't assert any right of payment against the
23 debtors. So, for those reasons, we submit the claim should be
24 disallowed and expunged.

25 THE COURT: Okay, then I'll hear from you, Mr.

1 Kolaga.

2 MR. KOLAGA: Thank you, Your Honor. Obviously,
3 we're - we received Ms. Greer's papers, the reply papers on
4 the 29th and obviously haven't had an opportunity to respond
5 to them. And at a minimum, I think we would like the
6 opportunity to do so. But going on, our view is that you
7 know, we are not seeking any cleanup costs that we have
8 incurred, because have conceded that we have not incurred
9 cleanup costs. What we do believe, based on the facts that we
10 know, and would be able to show, that our property has been
11 contaminated, because the properties all around it have been
12 contaminated. And most of, many of which have been acquired
13 by the Old GM or the GM affiliate.

14 We, as Ms. Greer correctly notes, we know that the
15 property immediately adjacent to our property has been
16 acquired by a GM affiliate. That men in space suits, as we
17 have called them, or the declaration states, are, are
18 regularly onsite testing and doing work there. We believe
19 there are properties essentially on all sides of the
20 property, which are contaminated and so which have been
21 acquired by GM. And in our Exhibit A we have tried to show,
22 at least for the Court's benefit at this point, that the
23 contamination arising from the Bedford, Indiana site is
24 massive and we think the court can and should take notice
25 that the site has been contaminated.

1 Now, we have not tested our own property, feeling
2 there was no good would come of that in general. But we are
3 confident that there is a flow of contamination under our
4 property that would render it essentially stigmatized from
5 the purposes of environmental law and unsellable. And we
6 believe that, if given the opportunity of say 30 days, we
7 would like the opportunity, if necessary, to put in some
8 papers to show that essentially on all sides of the property,
9 there is contamination. That and also that we would like the
10 opportunity, as well, if the Court will permit us to seek
11 discovery against GM to get the documents that they have in
12 their possession, which we - they have not, obviously we have
13 not had an opportunity to obtain, to show that the property
14 is obviously contaminated.

15 We are, we dispute Ms. Greer's position in her
16 papers that we are co-labile here. I think that there is a
17 wealth of cases that show that where there is passive, or
18 there may have been passive migration of contamination across
19 and under a person's property, that that does not make that
20 property owner liable under CERCLA. And again, our view is
21 that the claim is not contingent. That property damage has
22 occurred, is occurring and will continue for a long time into
23 the future. So we would like the opportunity, or we would ask
24 the Court to not disallow our claim and permit us the
25 opportunity to explore the facts of this case further.

1 THE COURT: Mr. Kolaga, did I understand you to
2 agree with Ms. Greer that your client hasn't yet written out
3 a check on any of this stuff?

4 MR. KOLAGA: The only checks my client has paid
5 out with regard to environmental issues are checks to my law
6 firm in connection with this claim. But it has not done any
7 soil or groundwater testing.

8 THE COURT: Uh-huh.

9 MR. KOLAGA: Or remediation.

10 THE COURT: If I gave you time to write, to submit
11 a new brief, what would you say, or a supplemental
12 submission, what would you say in it?

13 MR. KOLAGA: What would I say in that supplemental
14 brief?

15 THE COURT: Yeah.

16 MR. KOLAGA: Your Honor? I think what I would do
17 is I would I - I mean, I guess I would, if I had an
18 opportunity, I would discuss with the client whether it
19 wanted to do some environmental testing to shore up that
20 issue and document that issue of actual contamination present
21 on its property. And I would also submit additional
22 information with regard to adjacent properties upgrading and
23 downgrading, and cross-grading showing that those properties
24 are contaminated and have been contaminated for a long time.
25 And also, to respond to the issue of co-liability, which

1 obviously I hadn't had an opportunity to brief.

2 THE COURT: Do I correctly assume that you read my
3 decisions in Lyondell and Chemtura before today?

4 MR. KOLAGA: I, I have read them previously. But I
5 would say I didn't have an opportunity to respond to them in
6 the context of this matter.

7 THE COURT: Ms. Greer, do you want to reply?

8 MS. GREER: Yes, Your Honor. Simply put, Your
9 Honor, the ship has sailed. We filed our reply in plenty of
10 time. Mr. Kolaga had plenty of time to read the cases for
11 sure, and to otherwise respond. Instead of filing a response
12 to our objection, which set forth the basis for the
13 objection, 502(e)(1)(B), very clearly, they filed a
14 declaration. Mr. Kolaga knows better. If he wants to
15 establish a claim, he has to file appropriate papers. I've
16 called him time and time again. We've been in touch, I think
17 as far back as when we filed a late filed claim objection
18 last year to their claim, asking him what is the basis for
19 this claim. And Mr. Kolaga has not been able to respond.
20 There is no basis for the claim. If there were, and if the
21 property were contaminated, presumably, somebody would be
22 cleaning it up, and nobody is.

23 You know, Mr. Kolaga says that they want an
24 opportunity do soil testing and things like that. They have
25 their 502(j) rights. If they want to come back, if they have

1 a claim, they can come back. But right now, they have not
2 established a claim, there is not a prima facie evidence of
3 the claim. The only thing even Mr. Kolaga is pointing to,
4 admitting that there has been no soil testing is to look to
5 the neighbor's property. And again, the case law indicates
6 that's not sufficient either. Under Chemtura under Lyondell,
7 this case, this claim should be barred under 502(e)(1)(B).
8 And again, if it doesn't fall within the parameters of
9 502(e)(1)(B), he certainly can't set out a prima facie claim.
10 Unless Your Honor has any questions, that's all I've got.

11 THE COURT: Okay, Mr. Kolaga, sur-reply.

12 MR. KOLAGA: Your Honor, I don't believe that. I
13 believe that I have responded to Ms. Greer's statements
14 previously. And I don't believe that I am obliged to provide
15 chapter and verse in her conversation to me on other matters
16 as to the complete basis of my claim and my client's claim.
17 We feel that, as I said, that the property is obviously
18 contaminated. The property all around us has been
19 contaminated. We are not seeking recovery for cleanup costs.
20 We are seeking property damage for the stigma and loss of
21 value of our property, and that is the, that is the basis of
22 our claim.

23 THE COURT: Okay, under these circumstances, I'm
24 going to rule today. And it will take me a little time to
25 dictate it, but I'm going to do that now.

1 In this contested matter in the jointly
2 administered Chapter 11 cases of Motors Liquidation Company
3 and its affiliated debtors, the GUK Trust, which is a trust
4 formed for the benefit of the debtors' other creditors,
5 objects to the proof of claim filed by Relco Systems, Inc.

6 As I'm going to explain in more detail, Relco's
7 claim must be disallowed for two separate reasons, both of
8 which lead to the same result that Relco's reliance on
9 alleged contamination to a neighbor's property, and
10 inferences that might be drawn from that, doesn't give rise
11 to relief under the law, and then its failure to have
12 actually written out any checks for remediation makes its
13 claim disallowable for the same reasons that I ruled in
14 Chemtura and Lyondell under Section 502(2) (b) of the Code.

15 First, my findings of fact. On June 1st, 2009,
16 what was then called General Motors Corporation and its
17 affiliates commenced these Chapter 11 cases. November 30,
18 2009 was established as the deadline for filing all proofs of
19 claim against the debtors. While the GUK Trust doesn't raise
20 this as an issue of concern in its papers, I notice that
21 Relco filed its claim almost two and a half months after the
22 bar date. It's claim was assigned No. 70019.

23 On the face of its claim, Relco asserts that the
24 amount of its claim is unknown, and Relco's briefing does not
25 assert a specific claim amount. The GUK Trust and the

1 debtors' claims agent seem to understand the claim to be
2 asserted in the amount of \$297,200, but I'm not aware of
3 exactly how that computation was made.

4 Relco's claim was accompanied by an addendum
5 explaining the nature of Relco's claim. A claim, and I'm
6 quoting, "Claimant's property is situated within close
7 proximity to [a GM] plant located at 105 GM Drive, Bedford,
8 Indiana. Claimant has been made aware of substantial
9 environmental cleanup by General Motors at that location,
10 including cleanup of PCBs or other hazardous wastes,
11 hazardous substances or other contaminants. Claimant is not
12 currently aware whether its real estate has been
13 contaminated, or whether any PCBs or other contaminants from
14 the General Motors parcel have migrated to claimant's parcel.
15 To the extent there has been contamination, claimant files
16 this proof of claim."

17 On March 22nd, 2012, the GUK Trust filed its
18 objection to Relco's claim, pursuant to Sections 502(e)(1)(B)
19 and 502(b) of the Bankruptcy Code. On April 18, 2012, Relco
20 filed a responsive declaration, executed by Facility Manager,
21 Michael Hounshel, H-O-U-N-S-H-E-L, explaining that, "Relco
22 seeks recovery for property damages already incurred and
23 still being incurred at the Relco property, as well as for
24 investigation and cleanup costs, based on the best
25 information available to Relco at this time." Relco further

1 stated, "While Relco has not yet conducted soil and
2 groundwater testing on the Relco property, I know that *
3 property * immediate [sic] adjacent to the Relco property,
4 has environmental issues on it, for which GUK Trust is
5 liable." In Relco's own words, Relco's claim is based upon
6 "the significant amount of environmental testing and cleanup
7 work that has [sic] been done by the GUK Trust all around the
8 Relco property."

9 Turning now to my conclusions of law. A claim
10 exists only if the relationship between the debtor and the
11 creditor contains all elements necessary to give rise to a
12 legal obligation - "a right to payment" - under relevant non-
13 bankruptcy law. See Owen v. Riverwood, 209 F.3d 128 (2d Cir.
14 2000), Chateaugay, 53 F.3d 497 (2d Cir. 1995). If an
15 objection refuting at least one of a claim's essential
16 allegations is asserted, the claimant has the burden to
17 demonstrate the validity of the claim by a preponderance of
18 the evidence. See, e.g., In Re: Chain, 255 B.R. 281.

19 Here, even after the GUK Trust's objection
20 refuting the bases of Relco's claim, Relco has provided me
21 with no evidence to show that its property has been
22 contaminated by GM or anyone else. In fact, Relco admits that
23 it "has not yet conducted soil and groundwater testing" on
24 its own property, and that was reiterated to me today.
25 Relco's claim relies exclusively on allegations that its

1 neighbor's property has been contaminated. But allegations of
2 damages to a neighbor's property are insufficient to
3 establish evidence that the actual property in question has
4 been polluted. See, e.g., *DVL v. General Electric*, 811
5 F.Supp.2d 598 (N.D.N.Y. 2010); *North Bergen v. Sanger*, 2009
6 Westlaw 219, 2243 at *2 (N.J. Sup. Ct. App. Div. 2009)".

7 Therefore, under Section 502(b)(1) of the
8 Bankruptcy Code, Relco's claim must be disallowed and
9 expunged for its underlying failure to evidence a right of
10 payment, even a contingent one. In addition, Relco's claim
11 must be disallowed and expunged pursuant to Section
12 502(e)(1)(B). By Section 502(e)(1)(B)'s terms, three elements
13 must be met for a claim to be disallowed under that section.
14 One, the party asserting the claim must be liable with the
15 debtor on the claim of the third party; two, the claim must
16 be contingent at the time of its allowance or disallowance;
17 and, three, the claim must be for reimbursement or
18 contribution.

19 As we discussed in colloquy in oral argument
20 today, I've issued two lengthy decisions on Section
21 502(e)(1)(B) in the last two years, in *Chemtura*, 436 B.R.
22 286, on September 7, 2010, and *Lyondell Chemical*, 442 B.R.
23 236, on January 4, 2011. In these decisions, starting, as I
24 always do, with textual analysis before proceeding to fill
25 gaps with case law, I addressed each prong of Section

1 502(e) (1) (B) in turn. And I'll repeat that pattern here, as I
2 apply that statute and the case law to Relco's claim.

3 First the contingency element. Relco argues that
4 its claim is not contingent. I must disagree. It admits that
5 it has not yet incurred any costs with respect to the alleged
6 contamination. That was important. That's why I asked
7 questions on it, because if Relco told me it had written out
8 a check for remediation, and at least possibly, even for you
9 know, soil and water testing, I might regard that component
10 of its claim in a different way. But that fact remains, even
11 after oral argument today, undisputed. Relco admits it has
12 yet to investigate whether its property is contaminated.
13 Clearly, it has yet to determine the scope, amount and form
14 of any liability based on any potential contamination.

15 As I explained in Lyondell, and if I recall
16 correctly, also in Chemtura, until and unless amounts are
17 actually paid, claims remain contingent for Section
18 502(e) (1) (B) purposes. The contingency contemplated by
19 Section 502(e) (1) (B) relates to both payment and liability.
20 Therefore, a claimant's claim is contingent until its
21 liability is established and payment has issued. Debtors who
22 undisputedly face some environment liability are nevertheless
23 subject to contingent claims when the scope, amount and form
24 of that liability remains undetermined. The fact that some
25 environmental damage may already have occurred does not

1 transform a contingent claim into a noncontingent one.

2 Relco's claim for future cleanup costs, let me
3 rephrase that. Relco's claim is for future cleanup costs that
4 might or might not actually be incurred and then might or
5 might not actually be paid. Likewise, its conclusory
6 assertion that the value of its property has gone down might
7 or might not turn out to be true, depending on future sales
8 of the property, which have not yet taken place. Consider for
9 a moment the absurdity of allowing a claim for remediation
10 that has yet to occur, when that future remediation might or
11 might not take place, and might end up costing a tiny
12 fraction of the amount of the allowed claim, or even nothing
13 at all. At this point, we're not yet sure that Relco's
14 property is contaminated at all. It's claim, based solely
15 upon possibilities, and what at most is inference, and which
16 more likely is speculation, is contingent.

17 Moving to the co-liability prong. Relco argues
18 that it's not co-liaible with the debtors for the
19 contamination. In support of this argument, Relco states that
20 Relco is not responsible for the contamination arising from
21 the GM facility located near the Relco property. Of course,
22 as Relco is not liable for any contamination on its property,
23 why should Relco have a claim against the debtors at all? If
24 Relco won't shoulder an responsibility for environmental
25 concerns on its property, why should the debtors be required

1 to pay Relco any sum of money on account of the same
2 concerns?

3 Obviously, Relco seeks payment from the debtors
4 because Relco seeks to minimize its own liability exposure.
5 The more the debtors pay, the less Relco is exposed. That's
6 the very essence of co-liability, as I explained in my prior
7 decisions on this issue in Chemtura and Lyondell. And, of
8 course, if Relco hasn't been damaged at all, it doesn't have
9 any liability at all, then its claim has to fail for
10 502(b)(1) purposes, even if not under 502(e)(1)(B), too.

11 Finally, the contribution or contribution prong,
12 which Relco fails to address in its papers. If it has a claim
13 at all, it could only be reimbursement or contribution. As I
14 noted in my earlier decisions regarding Section 502(e)(1)(B),
15 Congress clearly meant to include all situations where
16 indemnitors or contributors could be liable with the debtor
17 within the scope of Section 502(e)(1)(B). Although
18 reimbursement is not defined in the Bankruptcy Code, Black's
19 Law Dictionary defines "reimbursement" as, "1. Repayment; 2.
20 Indemnification."

21 In Wedtech II, 87 B.R. 287, Judge Brosman of this
22 Court explained that the use of the word "reimbursement" in
23 the statute cannot be viewed as accidental. It's a broad word
24 which encompasses whatever claims a co-debtor has which
25 entitle him to be made whole for moneys he has expended on

1 account of a debt for which he and the debtor are both
2 liable." Even where a claim is based on a direct contractual
3 claim, if in substance it's a claim for reimbursement, it
4 must be disallowed. Here, Relco essentially seeks payment
5 from the debtors for money Relco might spend in the future,
6 or losses it might suffer in the future. That's a claim for
7 reimbursement and this prong of Section 502(e)(1)(B) is
8 satisfied.

9 Let me say one last thing about the request first
10 raised in oral argument for further briefing. As Ms. Greer
11 stated, the time for submission has already come and gone.
12 The exact nature of the GUK Trust's objections to this claim
13 were made very clear in its responsive papers. Counsel
14 elected to submit a declaration in response to that, but
15 provided no contrary law. Nor did it provide a basis or
16 explanation for failing to deal with the factual deficiencies
17 of its claims. It elected to, in essence, rest on the
18 inference that because adjacent property was contaminated,
19 its property must be, too. That was a contention that was
20 expressly addressed in two of the cases that I've cited. If
21 it wanted to engaged in the investigation to determine
22 whether its own property was contaminated, it's had plenty of
23 time to do that.

24 If I thought there was something that might be
25 brought to my attention that hadn't been brought, and that

1 would be relevant to the objection here, I might have been
2 more solicitous in granting further time for briefing, if I
3 thought there was a good excuse for not having done it first,
4 and if something useful might come out of it. I can make none
5 of those findings here.

6 Ms. Greer, you're to settle an order in accordance
7 with the foregoing. The time to appeal this decision will run
8 from the time of the entry of the order, and not from the
9 time that I'm dictating this decision.

10 Do we have any further business?

11 MS. GREER: No, Your Honor.

12 THE COURT: Alright.

13 MR. KOLAGA: No, Your Honor.

14 THE COURT: We're adjourned. Have a good day.

15 MS. GREER: Thank you, Your Honor.

16 MR. KOLAGA: Thank you.

17 (Whereupon, the proceedings were concluded at 3:22
18 p.m.)
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C E R T I F I C A T I O N

I, Linda M. Larsen, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Dated this 2nd day of June, 2012.

Linda M.
Larsen

Digitally signed by Linda M. Larsen
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